***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

% Dated : 09.03.2015

+ **WRIT PETITION No.33159 of 1997**

Ithagani Lachaiah,

S/o. Mallaiah,

Aged about 50 years,

Cultivation, R/o. Indurthi Village,

Marriguda Mandal,

Nalgonda District & 2 others

.... Petitioners

AND

$ The Joint Collector & Additional District

Magistrate, Nalgonda & 10 others

.. Respondents

! Counsel for Petitioners : Sri P. Venkateswara Rao

^Counsel for Respondents : Learned Government Pleader for Revenue for Respondent Nos.1, 2 and 15

Sri P. Ramakrishna Reddy, learned counsel for Respondent Nos.3 to 10

<GIST :

>HEAD NOTE :

? Cases referred :

1. (1998) 9 Supreme Court Cases 183

2. 2005 (5) ALD 9

3. AIR 1989 SUPREME COURT 1753

4. 2010 (2) ALD 1 (SC)

5. 2010 (6) ALD 748 (DB)

6. 2015 (1) Supreme 298

7. (2003) 7 Supreme Court Cases 667

8. AIR 1989 Supreme Court 1753

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE NINETH DAY OF MARCH TWO THOUSAND AND FIFTEEN

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.33159 of 1997

Between:

Ithagani Lachaiah,

S/o. Mallaiah,

Aged about 50 years,

Cultivation, R/o. Indurthi Village,

Marriguda Mandal,

Nalgonda District & 2 others

.. Petitioners

AND

The Joint Collector & Additional District

Magistrate, Nalgonda & 10 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33159 of 1997

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ORDER:

The land to an extent of Ac. 19.13 guntas in Survey Nos.202, 203, 204, 205, 213 and 214 of Indurthy Village in Marriguda Mandal, Nalgonda District, belong to Kishan Rao and Srinivas Rao. Nallabothu Komaraiah was the tenant of the above extent of land. Maddi Somaiah is nephew of Nallabothu Komaraiah. From out of this Ac. 19.13 guntas, Nallabothu Komaraiah gave Maddi Somaiah possession and enjoyment of Ac. 8.00 guntas of land in Survey No.202. The case of the petitioners is that Nallabothu Komaraiah has expressed no objection for grant of certificate under Section 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural lands Act, 1950 (for short, 'the Act') validating possession of land in favour of Maddi Somaiah. Accordingly, on 21.03.1972, the Tahsildar, Deverkonda, issued Certificate under Section 50-B of the Act in favour of Maddi Somaiah. The passbooks were issued to Maddi Somaiah. In the year 1984, Nallabothu Lingaiah, who is the son of Nallabothu Komaraiah, applied for issuance of certificate under Section 38-E of the Act. On the said application filed by Nallabothu Lingaiah, the Additional Revenue Divisional Officer (LR), Nalgonda, granted certificate under Section 38-E of the Act vide his proceedings No.236/DVK'78 in the year 1978 in favour of Nallabothu Komaraiah to an extent of Ac. 10.00 guntas in Survey Nos.202, 203, 204, 205, 213 and 214 of Indurthy Village, Devarakonda Taluq, Nalgonda District. Insofar as Survey No.202 is concerned, the extent of land covered by certificate under Section 38-E of the Act was Ac. 4.12 guntas. On 19.04.1984, the petitioners herein purchased Ac. 8.00 of land in Survey No.202 from Maddi Somaiah. The petitioners are in possession and enjoyment of the said land. They dug bore well. The land was brought into cultivation and now cultivation is regularly undertaken. The petitioners have approached the commercial banks for obtaining loans for the purpose of

development and cultivation.

2. While so, on 24.07.1993, Nallabothu Lingaiah filed an application before the Mandal Revenue Officer, Marriguda, under Section 32 of the Act claiming to be the protected tenant for the entire extent of Ac. 19.13 guntas in the above survey numbers and to restore possession to the entire extent of land. The Mandal Revenue Officer, by his proceedings Case No.B/2281/1993, dated 04.04.1994, rejected the claim of the applicant for grant of possession to the entire extent of land i.e., Ac. 19.13 guntas and declared that the applicant is entitled to possession only to an extent of Ac. 10.00 guntas covered by Certificate under Section 38-E of the Act and the petitioners herein are entitled to possession and enjoyment of Ac. 8.00 guntas in Survey No.202. Aggrieved by the said order of the Mandal Revenue Officer, the 3rd respondent filed appeal before the first respondent i.e., the Joint Collector and Additional District Magistrate, Nalgonda. The Joint Collector passed orders vide proceedings No.C3/JC/TA/11/94, dated 20.10.1997, by allowing the appeal filed by the 3rd respondent. The Joint Collector and Additional District Magistrate, Nalgonda, declared that the said land is a tenancy land and ordered restoration of possession in favour of protected tenant, the legal heir of which protected tenant is the 3rd respondent in the writ petition. Aggrieved thereby, this writ petition is instituted.

3. Heard Sri P. Venkateswara Rao, learned counsel for the petitioners, learned Assistant Government Pleader for Revenue (Telangana) for Respondent Nos.1, 2 and 15 and
Sri P. Ramakrishna Reddy, learned counsel for Respondent Nos.3 to 10.

4. Learned counsel for the petitioners contends that the vendor of the petitioner was validly issued Section 50-B certificate and such certificate was in force when the petitioners purchased the land and is still in force. The said certificate is not annulled. The third respondent has not filed appeal against the issuance of Section 50-B certificate and, therefore, the order has become final. The petitioners are *bona fide* purchasers. Having verified Section 50-B certificate, the Ryotu Pass Book and the revenue records, the petitioners purchased the land, developed the land for cultivation and have been cultivating. The petitioners as well as the third respondent reside in the same village and their lands are adjacent lands. The third respondent was aware of issuance of Section 50-B certificate in favour of Maddi

Somaiah and the purchase made by the petitioners in the year 1984. The third respondent was aware of the development and cultivation undertaken by the petitioners and, therefore, it is not permissible for him to raise an objection on the possession and enjoyment by the petitioners and resorting to provision contained in Section 32 of the Act for restoration of possession. The application for restoration of possession was not made *bona fidely*. It is made only to harass and humiliate the petitioners. Such an issue was raised after more than 25 years.

5. Learned counsel for the petitioners further contends that the Joint Collector, erred in not appreciating that the application for restoration of possession was made after long lapse of time i.e., 25 years from the date of issuance of Section 50-B certificate. In fact the vendor of the petitioners was in possession much prior to issuance of Section 50-B certificate as evident from the document of the year 1955, which was part of the record before the Mandal Revenue Officer, Marriguda. It disclose that the sale consideration was received by Sri Nallabothu Komaraiah before handing over possession of the land and, thus, the document of 1955 is an evidence to show that the vendor of the petitioners has been in possession from the year 1955 onwards. The Joint Collector, however, has not appreciated that within a reasonable time the third respondent ought to have approached him for grant of restoration of possession and the third respondent, being the resident of the same village and having full knowledge of the possession and enjoyment by the vendor, obtaining of Section 50-B certificate by the vendor and sale of the land to the petitioners, knowingly kept quiet all along.

6. Learned counsel for the petitioners further contends that the several contentions raised before the Joint Collector were not appreciated. It was also contended that against an order under Section 50-B, an appeal lies under Section 90 of the Act, but no such appeal was filed and the order under Section 50-B has become final and thus, the application for restoration is not maintainable. Learned counsel for the petitioners further contends that Section 50-B certificate was not issued at the instance of the original owner of the property. It was issued as per the understanding made between the petitioners and the protected tenant. The tenant expressed no objection before the Tahsildar, which is evident from the reading of the certificate issue under Section 50-B. Learned counsel for the petitioners further

submits that the appeal under Section 90 of the Act is not maintainable on the facts of this case. It is applicable only in case of surrender made by the protected tenant in favour of the owner.

7. In support of his contentions, the learned counsel for the petitioners relied on the following decisions:

1. Kotaiah and another Vs. The Property Association of the Baptist Churches (Pvt.) Ltd.

   [AIR 1989 Supreme Court 1753]

2. Joint Collector, Rangareddy District and others Vs. P. Harinath Reddy and others

   [2009 (4) ALT 1 (D.B.)]

3. Ibrahimpatnam Taluk Vyavasaya Cooli Sangham Vs. K. Suresh Reddy and others

   [(2003) 7 Supreme Court Cases 667]

4. Ponnala Narsing Rao Vs. Nallolla Pantaiah and others [(1998) 9 Supreme Court Cases 183]

5. A. Narasimha Vs. A. Krishna and others

   [2005 (5) ALD 9]

6. Bheemati Dawood Vs. Madichetty Rachaiah and others [2004 (3) ALD 798]

7. Ibrahimpatnam Taluk Vyavasaya Cooli Sangam, Rep. by its General Secretary Vs. K. Suresh Reddy and others [1996 (2) ALD 945 (D.B.)]

8. V. Shantha Kumari and others Vs. District Revenue Officer and Additional District Magistrate, Ranga Reddy District and other [2003 (2) ALD 330]

9. Jt. Collector Ranga Reddy Dist. & Anr. Etc. Vs. D. Narsing Rao & Ors. Etc. Etc. [2015 (1) Supreme 298]

8. Learned counsel for the third respondent contends that Nallabothu Komaraiah was the protected tenant and the rights of the protected tenants are protected by the Andhra Pradesh (Telangana Area) Tenancy and Agricultural lands Act, 1950, and the protected tenant is entitled to restoration of possession under Section 32 of the Act at any time. Section 32 of the Act does not prescribe time limit to make a claim for restoration of possession. Under Section 32 of the Act the protected tenant can claim at any time restoration of possession and once such an application is filed, it is mandatory for the competent authority to restore possession of the land on which he is a protected tenant. Law does not recognize consent given by a protected tenant. Whoever is in possession has to be evicted and possession be restored to protected tenant.

9. Learned counsel for the third respondent further contends that Late Nallabothu Komaraiah never executed any document in favour of Maddi Somaiah and no statement was recorded by the Tahsildar, Deverkonda, from the grand father of the third respondent and Section 50-B certificate was issued behind the back of the petitioners and at the instance of the original land owners. That certificate is not binding on the 3rd respondent and the rights are vested in the 3rd respondent as legal heir of protected tenant and is entitled to seek restoration of possession.

10. Learned counsel for the third respondent further contends that since 1975, the family of the protected tenant have been fighting with the land owners and because of problem created by owners, immediately the 3rd respondent could not take steps to seek restoration of possession and as soon as those issues are resolved, application under Section 32 of the Act was made. There was no lapse on the part of the third respondent in agitating his grievance and asking for restoration of possession. The third respondent disputes the claim of the petitioners about

spending money for developing the land and cultivating the land. Learned counsel for the third respondent further submits that the petitioners are having huge extent of land and they have grown fruit bearing plants in those lands.

11. Learned counsel for the third respondent submits that the decisions relied upon by the learned counsel for the petitioners are distinguishable. Conditions weighed with the Supreme Court in ***Ponnala Narsing Rao Vs. Nallolla Pantaiah and others*** are not attracted in this case. Learned counsel for the third respondent further submits that the decision of this Court in ***A. Narasimha Vs. A. Krishna and others*** is also distinguishable. In that case, the protected tenant gave consent to his son and he was also a witness for the transaction and, therefore, he had clear knowledge of what was happening. In this case, there was no such consent.

12. The other judgments relied upon by the learned counsel for the petitioners relate to the exercise of power vested in an authority by a statute within reasonable time. As held by the Supreme Court, the Andhra Pradesh (Telangana Area) Tenancy and Agricultural lands Act, 1950, is a welfare legislation. Provisions of the said Act have to be construed liberally and in favour of the protected tenant. The interest of the protected tenants are required to be protected; otherwise the very purpose of the enactment would be defeated. Having realised that the tenants are being thrown out of their lands; displaced by illegal means resorted by the original owners and other vested interest, provision is made in Section 32 of the Act vesting right in the protected tenant to seek restoration of possession and, thus, the principle laid down in the various judgments relied upon by the learned counsel for the petitioners cannot be applied, as it would amount to defeating the claim of the protected tenants.

13. Learned counsel for the third respondent further submits that there is no provision for protected tenant to surrender to a third party his right to enjoy the property as a protected tenant. He can only enjoy the property as a protected tenant until certificate under Section 38-E of the Act is issued and thus, even if there was a consent for issuing 50-B certificate, the same is not valid and it cannot be enforced against the third respondent.

14. Learned counsel for the third respondent relied on decisions in ***Kotaiah and another Vs. The Property Association of the Baptist Churches Pvt. Ltd.*** and ***Edukanti Kistamma (dead) Thr. LRs. and others Vs. S. Venkatareddy (dead) Thr. LRs. and others .***

15. Learned Government Pleader justified the order of the Joint Collector. Since Late Nallabothu Komaraiah was a protected tenant, his legal heirs are entitled to claim restoration of possession of tenancy land and in Section 32 of the Act, consciously time limit is not prescribed. Thus, a protected tenant can claim possession at any time.

16. The relevant facts are not in dispute. The grand father of the third respondent Late Sri Nallabothu Komaraiah was the protected tenants to an extent of Ac. 19.13 guntas of land in Survey Nos.202, 203, 204, 205, 213 and 214 of Indurthy Village in Marriguda Mandal, Nalgonda District. The father of the third respondent was granted certificate under Section 38-E of the Act only to an extent of Ac. 10.00 guntas in the year 1978. Much before the issuance of Section 38-E certificate, the vendor of the petitioner was issued Section 50-B certificate. In 1984 the 50-B certificate holder sold the land in favour of the petitioners. The petitioners have been cultivating and in enjoyment of the said property. It is also not in dispute that the total extent of land in Survey No.202 was Ac. 12.12 guntas; out of this extent Ac. 4.12 guntas was covered by Section 38-E certificate issued in favour of the father of the 3rd respondent and Ac. 8.00 guntas was covered by Section 50-B certificate issued to the vendor of the petitioners. The above extents of land are adjacent to each other and the petitioners as well as the third respondent are residents of the same village and are cultivating the adjacent lands. It is also admitted fact that Maddi Somaiah is a nephew of Nallabothu Komaraiah. This would show that the family of the protected tenant was aware of Ac. 8.00 guntas of land being enjoyed and being in possession by Maddi Somaiah much before the issuance of Section 50-B certificate and after purchase made by the petitioners, the petitioners are in possession and enjoyment of the said property.

17. The issue for consideration is whether the claim of the third respondent for

restoration of possession as protected tenant to an extent of Ac. 8.00 guntas in Survey No.202 is hit by delay and laches? and whether the Joint Collector was right in granting restoration of possession by his orders impugned in the writ petition, dated 20.10.1997, on an application filed on 24.07.1993 from out of which the appeal was filed before him ?

18. Relying on the precedents on the subject, the learned counsel for the petitioners vehemently contended that the application for restoration of possession having been filed after 25 years from the date of issuance of Section 38-E certificate in favour of the third respondent and much later to issuance of Section 50-B certificate in favour of Late Maddi Somaiah ought to have been rejected on the ground of delay and laches.

19. The stand of the learned counsel for the 3rd respondent is that Section 32 of the Act has to be liberally construed and as it does not prescribe any limitation, as long as a person retains his status as protected tenant, he is entitled to claim restoration of possession.

20. Thus, assuming that valuable right is vested in the protected tenant under Section 32 of the Act, is it open to the protected tenant to claim restoration of possession at any time without regard to the series of events that have taken place in the meantime.

21. Section 32 of the Act reads as under:

"**Section 32: Procedure of taking possession"-**

1. A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the Tahsildar in writing in the prescribed form for such possession.

2. No landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tahsildar, for which he shall apply in the prescribed form.

3. On receipt of an application under sub-sec. (1) or sub-sec. (2) the Tahsildar shall, after holding an enquiry pass such order thereon as he deems fit.

4. Any person taking possession of any land or dwelling house otherwise than in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, shall, without prejudice to his liability to the penalty provided in Section 96, be liable to forfeiture of the crops, if any, grown on the land to the payment of such costs as may be awarded by the Tahsildar or by the Collector

on appeal from the Tahsildar."

22. Reading of Section 32 makes it clear that no time limit is prescribed to file an application seeking restoration by a protected tenant.

23. There is no quarrel with the principle that the protected tenant is entitled to possession and enjoyment of the property once he is declared as a protected tenant and he cannot be displaced from said land without following the mandate of the Act and if the protected tenant was displaced either by the owner or by any other person, by resorting to provision under Section 32 of the Act, the possession of the protected tenant can be restored. However, in the facts of this case was such power validly invoked having regard to inordinate delay and subsequent developments after dispossession ?

24. Learned counsel for the 3rd respondent placed reliance on decision of the Supreme Court in ***Edukanti Kistamma's Case*** *(4 Supra)* to emphasis that the Act 1950 being the beneficial legislation requires interpretation to advance social and economic justice and enforce constitutional directives and not to deprive a person of his right to property. He, therefore, contends that provision in Section 32 of the Act should not be construed in a narrow and pedantic manner and introduce time constraint on exercise of such power.

25. On the scope of the availing of statutory remedies for enforcement of the rights vested in a statute, the principle of law is well settled. The settled principle of law is that such right has to be availed within a reasonable time and if a person does not avail the remedies provided by the statute for enforcement of the rights vested by the statute within reasonable time, the claim cannot be granted. What is reasonable time depends on the facts and circumstances of each case. Following precedents highlight this principle.

26. In ***Joint Collector, R.R. District, Hyderabad and another Vs. D. Narasing Rao and others,*** the Division Bench of this Court held that *Suo motu*

exercise of revisional jurisdiction under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli after long lapse of time. In that case, 50 years held as not valid. In the said provision, no time limit is prescribed to exercise such power. The said decision of this Court was affirmed by the Supreme Court in ***Jt. Collector Ranga Reddy Dist. & Anr. Etc. Vs. D. Narsing Rao & Ors. Etc. Etc.***. The Supreme Court reviewed long line of precedents on the scope of exercise of power though statutory authority is vested with unlimited powers in several enactments after inordinate delay and when such provision has not prescribed time limit to exercise the power, the Supreme Court held as under:

> "No time limit is prescribed in the above Regulation for the exerecise of *suo motu* power but the question is as to whether the *suo motu* power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos.36 and 37 Of Gopanpally village for house-sites to the government employees. In other words the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition No.21719 of 1997 challenging the Government Order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from respondent Nos.1 and 2 herein filed a civil suit in O.S.No.12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in survey No.36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.
>
> In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."

27. While concurring with the view taken by Justice Sri C. Nagappan, Justice T.S. Thakur held as under:

> "To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

28. The principle laid down in ***Jt. Collector Ranga Reddy Dist.*** *(5 Supra)* by the Division Bench was followed by another Division Bench in ***Joint Collector, Rangareddy District and others Vs. P. Harinath Reddy and others***. One of the issues for consideration was whether order of resumption of assigned land on the ground of violation of Section 3 of the AP Assigned Lands (Prohibition of Transfers) Act, 1977, can be passed after long lapse of time. Following the decision of Supreme Court in ***Ponnala Narsing Rao's Case*** *(1 Supra),* Division Bench of this Court held that it is not permissible to exercise power of resumption after long lapse of time. In that case, it was 40 years.

29. In ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and others***, the exercise of *suo motu* power under Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, was in issue. Such power was invoked to cancel validation certificates issued 13 to 15 years after issuance thereof and 10 years after insertion of Section 50-B(4) of the Act. This was held to be bad. In ***Ponnala Narsing Rao's Case*** *(1 Supra),* the issue considered by the Supreme Court was with reference to the filing of an application under Section 32 of the Act. It was contended that after unreasonable delay, such an application was filed and the same ought to have been dismissed. Upholding such contentions, the Supreme Court held as under:

> "So far as the second contention is concerned, it is true that though no express period of limitation is provided for filing application under Section 32 of the Act, such applications have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on land by improving it. But all these questions have to be pleaded and proved. Surprisingly, no such contention was ever canvassed much less tried to be proved on any equitable ground by the petitioner. Therefore, this second contention on the facts of the present case cannot be sustained. It has also to be noted that no plea of adverse possession was put forward by the petitioner in support of his case."

30. The very same provisions of this enactment have come up for consideration again in this Court in ***A. Narasimha's Case*** *(2 Supra)*. Order directing restoration of possession in exercise of power under Section 32 of the Act was considered. This Court emphasized that if a possession is enjoyed by third party with the acquiescence and approval of a protected tenant or his successors, the application for restoration under Section 32 of the Act is impermissible. This Court held that the principle of estoppel and acquiescence are equally applicable to the proceedings under Section 32 of the Act. If the protected tenant inducts himself the third party and vests possession of the property or a party to the transaction directly or indirectly subscribes such transfers, he cannot turn around or fall back on provisions contained in Section 32 of the Act. This Court held that if such a course of action is permitted, the whole object of the Act becomes defeated and become a tool in the hands of indiscriminate persons, to take innocent purchasers for a ride. In that case, the sale took place in the year 1952 at the instance of the protected tenant and the protected tenant had the knowledge and approval of such sale. In that case, there was a delay of 30 years.

31. The decisions relied upon by the learned counsel for the third respondent has no application to the facts of the case. I n ***Kotaiah and another Vs. The Property Association of the Baptist Churches (Pvt.) Ltd.***, the issue for consideration was can a protected tenant holding Section 38-E certificate be dispossessed by the owner of the land holding that tenancy was duly terminated and the assignee has no right to possess the land and that the respondent association was the owner as held by the Tahsildar on 28.11.1977. The said decision of the Tahsildar was upheld by the appellate authority and by this Court in the revision petition filed under Section 91 of the Act. The Supreme Court held that protected

tenant has a right to become full owner and, therefore, their tenancy cannot be terminated. It is further held that protected tenant cannot be dispossessed illegally either by the landlord or anybody else. If so dispossessed, the Tahsildar has to exercise power under Section 32 of the Act. That case does not deal with delay in invoking power under Section 32 of the Act.

32. In the instant case, the dispute is not between the owner and the tenant. The dispute is between protected tenant, his nephew and the purchasers of the land from the nephew. He was not illegally dispossessed. No doubt right is vested in a protected tenant for possession and enjoyment of tenancy lands and primary objective of the Act is to protect the interest of the protected tenant. But, merely because the right is vested in a protected tenant, he cannot keep quiet, allow others to enjoy the property and sleep over the said right and wake up after long lapse of time without regard to the subsequent developments and apply for enforcement of the provision under Section 32 of the Act.

33. In the several decisions relied upon by the learned counsel for the petitioners, uniformly it is held that whenever there is inordinate delay in invoking the provisions of a statute, an application should be rejected on that ground alone. Principle reiterated from time and again that even if no time limit is prescribed in the statute for exercise of power, such power has to be exercised within reasonable time and what is reasonable time depends on the facts of each case. In the cases discussed above, the delay in filing an application for *suo moto* exercise of power ranged between five years in one case to 12 to 15 years in another case and delay of 20 years and more in other cases. The Supreme Court held it is unreasonable to exercise power in such cases.

34. In the instant case, as noticed above, the vendor of the petitioners was granted Section 50-B certificate on 21.03.1972. When the father of the third respondent applied for certificate under Section 38-E, he was conscious that his father was the protected tenant for Ac. 19.13 cents. When the competent authority restricted issuance of certificate under Section 38-E to Ac. 10.00 guntas, he did not protest and even after issuance of Section 38-E certificate, he kept quiet. Section 90

of the Act vests power to prefer an appeal against any order or decision taken by the designated authority. Thus, appeal lies against a certificate issued under Section 50-B of the Act. Section 90 read with Section 93 of the Act prescribes time of 60 days to file such appeal. He has not filed appeal against the order under Section 50-B certificate, dated 24.07.1973. Assuming that the third respondent had no knowledge of issuance of Section 50-B certificate, he should have been alarmed when in the Section 38-E certificate the extent of land mentioned was only Ac. 10.00 guntas and more so, only Ac. 4.12 guntas was covering survey No.202 leaving the other Ac.8.00 guntas. He never protested when third parties were cultivating the land even assuming that he was not aware of the sale made by Maddi Somaiah to the petitioners in the year 1984. For the first time, he filed an application on 24.07.1993 for restoration of possession. Thus, as noted by this Court in ***A.Narasimha's Case*** *(2 Supra),* the third respondent is acquiesced of the transactions made earlier, acquiesced of the purchase made by the petitioners and their possession and enjoyment of the said land. Therefore, he is estopped from filing an application for restoration of possession under Section 32 of the Act, more particularly, after long lapse of time.

35. In the facts of this case, it cannot be said that the application for restoration of possession under Section 32 of the Act was filed within a reasonable time. Thus, the order of the Joint Collector restoring possession is not sustainable. The order is also not sustainable for the reason that the Joint Collector has not assigned reasons for entertaining such application after long lapse of time. However, in the counter affidavit, such decision is sought to be supported by saying that no time limit has been prescribed in the Act and, therefore, the power has been validly exercised. The order of quasi- judicial authority must contain reasons in support of the decision and cannot be supplemented by way of an affidavit in the writ Court when a challenge is made. Having regard to the above discussion and findings, the order impugned in the writ petition is set aside.

36. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 9th March, 2015

Note: L.R. copy to be marked : Yes

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33159 of 1997

Date: 9th March, 2015

KL